Information for Landlords and Debtor-Tenants of Residential Property

The filing of a bankruptcy petition entitles the debtor to an immediate and automatic stay against all collection efforts. 11 U.S.C. § 362(a). There is a general stay against any act to obtain possession of property of the estate. 11 U.S.C. § 362(a)(3). The stay remains in effect until it is either lifted upon a creditor's motion, or until the case is closed or dismissed, or the debtor's discharge is granted. 11 U.S.C. § 362(c). The following exceptions to the automatic stay are relevant to landlords of residential property:

Exception #1: If a judgment for possession of the property was obtain as a result of a monetary default (i.e., failure to pay rent) before the filing date. There is an automatic exception from the stay as to the continuation of any eviction by a landlord against a debtor involving residential property in which the debtor resides as a tenant, if the landlord, prior to the petition date, obtained a judgment for possession of the property. 11 U.S.C. § 362(b)(22).

This exception to the automatic stay would not apply if:

- (1) The debtor specially marks the petition indicating a judgment of possession has been obtained on the rental property and provides the name and address of the landlord that obtained the judgment, 11 U.S.C. § 362(1)(5);
- (2) The debtor files with the petition and serves upon the landlord a certification under penalty of perjury that, under the applicable landlord-tenant law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, 11 U.S.C. § 362(l)(1);
- (3) Along with the petition, the debtor (or an adult dependent of the debtor) has deposited with the Clerk of the Bankruptcy Court any rent that would become due during the 30-day period after the filing of the bankruptcy petition, 11 U.S.C. § 362(1)(1); and
- (4) Within 30 days of the filing of the petition, the debtor files with the bankruptcy court and serves upon the landlord a further certification (under penalty of perjury) that the entire monetary default has been cured, 11 U.S.C. § 362(1)(2).

The landlord may file and serve an objection to either certification, in which case the bankruptcy court is required to hold a hearing within 10 days to determine if the debtor's certification is true. If the court upholds the objection, the exception to the automatic stay applies immediately, and relief from the stay is not required to enable the landlord to complete the process of recovering full possession of the property. 11 U.S.C. § 362(1)(3).

If the debtor indicates on the petition that there was a judgment for possession of the rental property in which the debtor resides and does not file the required certificate, the exception to the automatic stay applies immediately and relief from the automatic stay is not required to enable the landlord to complete the process of recovering full possession of the property. 11 U.S.C. § 362(1)(4).

Exception # 2: If the eviction action seeks possession of the residential property as result of a non-monetary default of the debtor (i.e., conduct causing a health and/or fire risk; use of illegal drugs on property). There is an automatic exception from the stay as to the continuation of any eviction by a landlord against a debtor involving residential property in which the debtor resides as tenant, if the debtor is "endangering" the property or using, or allowing to be used, illegal controlled substances on the property. 11 U.S.C. § 362(b)(23).

This exception to the automatic stay is subject to the following procedural requirements:

The landlord must file with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property. 11 U.S.C. § 362(b)(23).

The debtor is then required to file an objection with the court and serve such objection on the landlord within 15 days of the landlord's certification that the tenancy is endangering the property or that the tenant is conducting the described illegal activity. A hearing must be held within 10 days of the debtor's objection, and the debtor has the burden of satisfying the court that the conditions complained of by the landlord either did not exist or have been remedied in order to keep the stay in effect. 11 U.S.C. § 362(m)(2).

If the debtor fails to object within 15 days of the landlord's certificate, the exception to the automatic stay applies and relief from the automatic stay is not required to enable the landlord to complete the process of recovering full possession of the property. 11 U.S.C. § 362(m)(3).